

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1253 of 1997

in

MISC.CIVIL APPLICATION No 582 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VASANTBHAI NATVARLAL SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR GM JOSHI for Appellant

SERVED for Respondent No. 1

MR DA BAMBHANIA for Respondent No. 2

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CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

Date of decision: 13/02/98

ORAL JUDGEMENT

This appeal was admitted by the Division Bench by an order dt. 17th January 1998. It was ordered to be placed for final hearing on 6th February 1998. To day the matter is called out for hearing.

This appeal is filed against an order passed by

the learned Single Judge in Special Civil Application No. 1630 of 1996 as also against the order passed in MCA No.582 of 1996.

The appellant is original petitioner. He filed Special Civil Application No. 1630 of 1996. It came up for admission before the learned Single Judge and it was dismissed for default. When MCA was filed for restoration of the main matter, that application was also rejected on the ground that when the matter was called out and taken up for hearing on April 10, 1996, which was dismissed for default as nobody was present in the Court. The ground put forward on behalf of the learned counsel for the appellant was that he was busy in another court. According to the learned Single Judge, this is hardly any ground much less sufficient ground for grant of prayer for recalling of the order dt. 10.4.1996.

In our opinion, in the facts and circumstances of the case, Misc. Civil Application ought to have been allowed. Accordingly, Letters Patent Appeal is allowed. The order passed in Spl.C.A.No.1630 of 1996 and MCA No.582 of 1996 are hereby quashed and set aside and the main matter Spl.C.A.No.1630 of 1996 is restored to file. Office will now place that matter before the appropriate court taking up such matters. We may state that we are not making any observation on merits and as and when the matter will be taken up for hearing, appropriate court will pass appropriate order on its own merits. No order as to costs.

Dt.13.2.1998. (C.K.THAKKER J.)

(A.L.DAVE J)